Lyon, L. R. 4 Ch. App. 218, 224. In some jurisdictions equity has even taken the extreme step of allowing the creation of easements by parol license. *Rerick* v. *Kern*, 14 S. & R. (Pa.) 267; *Rhodes* v. *Otis*, 33 Ala. 578; *Rochdale Canal Company* v. *King*, 22 L. J. Ch. n. s. 604. *Contra*, *National Stock Yards* v. *Wiggins Ferry Co.*, 112 Ill. 384; *Nowlin Lumber Co.* v. *Wilson*, 119 Mich. 406, 78 N. W. 338; *Ewing* v. *Rhea*, 37 Ore. 583, 62 Pac. 790. This doctrine marks a clean break from the common law, in which it can find little justification. The principal case goes even farther, in that there is here no license, and so the basis on which the doctrine usually proceeds is lacking. Nor is there any misrepresentation. The alleged servient owner's conduct was throughout consistent with the assumption that the city was thereafter to acquire water rights by condemnation. The decision tends to secure municipalities from the carelessness of their legal advisers, but it is otherwise to be regretted.

EVIDENCE — DECLARATIONS CONCERNING PEDIGREE — REQUISITE CONNECTION WITH THE FAMILY. — To prove his claim to the deceased's property, the petitioner offered declarations of his mother that she married the father of the deceased. There was no evidence of the relationship between the declarant and the deceased other than these declarations. *Held*, that the declarations are not admissible. *Aalholm* v. *People*, 105 N. E. 647 (N. Y.).

All the courts agree that the declarant's connection with the family must be proved by independent evidence in order to bring his declarations within the pedigree exception to the hearsay rule. *Banbury Peerage Case*, 2 Selw. N. P. 764. But there has been a wide difference of judicial opinion with respect to the meaning of "the family." The deceased's family, of course, is the one primarily concerned with the question of inheritance, but a marriage between representatives of the two families is none the less a fact in the family history of both. The broader, and what has appeared to be the prevailing view, has therefore been satisfied with proof of the declarant's relationship to either family. *Monkton* v. *Attorney-General*, 2 Russ. & M. 147; *Sitler* v. *Gehr*, 105 Pa. 577. Dean Wigmore has lent his weighty support to this view, and has severely criticised its opponents. See WIGMORE, EVIDENCE, § 1491. The narrower rule requires independent proof of the declarant's membership in the family whose inheritance is in dispute. *Blackburn* v. *Crawfords*, 3 Wall. (U. S.) 175. The declarations offered in the principal case give an excellent illustration of the dangers of manufactured evidence involved in the more liberal rule, which would make possible the establishment of a claim by the claimant's own testimony to the assertions of deceased members of his family. Such considerations go far to justify the court's adoption of the more conservative view, and its decision in favor of a doctrine somewhat discredited in the past would seem likely to determine the trend of future American authority.

EVIDENCE — STATEMENTS IN PUBLIC DOCUMENTS — POST-OFFICE RECORDS. — To prove the time at which a telegram was delivered, records kept by the post-office officials showing the times of the receipt and delivery of telegrams were offered. These records were preserved only for a limited time, and were used chiefly for calculating the messenger boys' fees. The absence of the entrant was not accounted for. *Held*, that the records are not admissible. *Heyne* v. *Fischel*, 110 L. T. R. 264 (K. B. Div.).

The court holds that the absence of any opportunity for inspection by the public was a fatal objection to the admission of these records under the public document exception to the hearsay rule. This doctrine seems well established in England, on the ground that publicity reduces the probability of error. *Sturla* v. *Freccia*, L. R. 5 A. C. 623, 643. This reasoning, however, merely points out a possible advantage from public access, of small moment because

of the fixed requirement that the record must be kept in discharge of official duty, and it is submitted that the limitation is not a desirable one. In the United States it has never been definitely accepted. See WIGMORE, EVIDENCE, § 1634. But the second objection taken by the court, that the records were only for a temporary purpose and not of a permanent character, is valid, and on this point the principal case may be supported. *Hegler* v. *Faulkner*, 153 U. S. 109. In the United States, post-office records have been generally considered within the public document exception. *Gurney* v. *Howe*, 9 Gray (Mass.) 404. But the records admitted are kept by the direction of the Post-Office Department and the postmaster is bound to see that they are correct and to certify the facts to the Department. See *Miller* v. *Boykin*, 70 Ala. 469, 478. The records in the principal case would perhaps be more properly admissible under the entry in the course of business exception to the hearsay rule. But failure to account for the absence of the entrant is conclusive against this possibility. See WIGMORE, EVIDENCE, § 1521.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION — INDEBTEDNESS OF HEIR TO ESTATE AS LIEN ON HIS SHARE OF THE REALTY. — An heir owed the estate more than the value of his distributive share of the real estate. After the Probate Court had refused the indebted heir participation in the distribution thereof, judgment creditors of this heir levied on his alleged interest in the realty. The other heirs brought a bill in equity for a decree to quiet their title to such real estate, free from any lien on the part of the judgment creditors. *Held*, that the relief should be granted. *Stenson* v. *Halvorson*, 147 N. W. 800 (N. D.).

It is considered that the indebtedness constitutes a prior equitable lien upon the debtor's distributive share of the real estate. Admittedly personal property, which vested in the administrator, could be charged with a distributee's indebtedness, but at common law the rule was clearly otherwise as to realty, which passed directly to the heir free of all charges. See *Smith* v. *Kearney*, 2 Barb. Ch. (N. Y.) 533, 547; 9 HARV. L. REV. 157. But under modern statutes, such as that in the principal case, which treat real and personal property alike, as descendible subject to administration, many courts have stretched a point to allow the administrator to withhold real estate from an indebted heir. *Streety* v. *McCurdy*, 104 Ala. 493, 16 So. 686; *Oxsheer* v. *Nave*, 90 Tex. 568, 40 S. W. 7. This result is not without vigorous dissent. *Marvin* v. *Bowlby* 142 Mich. 245, 105 N. W. 751; *La Foy* v. *La Foy*, 43 N. J. Eq. 206, 10 Atl. 266. Some courts distinguish between real estate and surplus proceeds in administrator's hands from the sale thereof. *Fiscus* v. *Moore*, 121 Ind. 547, 23 N. E. 362. This distinction is probably unsound, for such funds are not personal assets, but in equity are still realty, subject to the lien of judgment creditors of the heir. *Cf. Simonds* v. *Harris*, 92 Ind. 505. See *Streety* v. *McCurdy*, *supra*, 687. The principal case reaches an equitable and practical result, and agrees with the modern tendency to abolish the artificial difference in the administration of intestate real and personal property.

FIXTURES — REMOVAL — EFFECT OF NEW LEASE ON TENANT'S RIGHT OF REMOVAL. — A tenant in possession installed agricultural fixtures with the understanding that he should have the right to remove them. Subsequently he took out a new lease, which described the premises in general terms and reserved no right to remove the articles affixed. There was in addition a covenant to yield up the premises in as good repair as when taken. The landlord now sues the tenant for removing the fixtures. *Held*, that he cannot recover. *Sassen* v. *Haegle*, 147 N. W. 445 (Minn.).

The court speaks as though the fixtures remained personalty. Grant this, and tenant's right of removal is unquestionable. Probably, however, the court